Mark Scheme

January 2022

BTEC Level 3 Nationals in Applied Law

Unit 3: Applying the Law

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Unit 3: Applying the Law

General marking guidance

- All learners must receive the same treatment. Examiners must mark the first learner in exactly the same way as they mark the last.
- Mark grids should be applied positively. Learners must be rewarded for what they have shown they can do rather than be penalised for omissions.
- Examiners should mark according to the mark grid, not according to their perception of where the grade boundaries may lie.
- All marks on the mark grid should be used appropriately.
- All the marks on the mark grid are designed to be awarded. Examiners should always award full marks if deserved. Examiners should also be prepared to award zero marks, if the learner's response is not rewardable according to the mark grid.
- Where judgement is required, a mark grid will provide the principles by which marks will be awarded.
- When examiners are in doubt regarding the application of the mark grid to a learner's response, a senior examiner should be consulted.

Specific marking guidance

The mark grids have been designed to assess learners' work holistically.

Rows in the grids identify the assessment focus/outcome being targeted. When using a mark grid, the 'best fit' approach should be used.

- Examiners should first make a holistic judgement on which band most closely matches the learner's response and place it within that band. Learners will be placed in the band that best describes their answer.
- The mark awarded within the band will be decided based on the quality of the answer in response to the assessment focus/outcome and will be modified according to how securely all bullet points are displayed at that band.
- Marks will be awarded towards the top or bottom of that band depending on how they have evidenced each of the descriptor bullet points.

To be used twice, once for each activity in Unit 3 – marks 36 (x2)

Total Marks for external Task is 72

Selection and understanding of legal principles relevant to context	**0**	**1–2**	**3–4**	**5–6**	**7–8**
	No rewardable material.	Selection of some basic legal principles. Little understanding of the law relevant to the context. Limited use of relevant authorities in the context of the scenario.	Selection of some appropriate legal principles. Some understanding of the law relevant to the context. Uses some relevant authorities in the context of the scenario.	Selection of appropriate legal principles. Clear understanding and linkage to the law and context. Uses a variety of appropriate authorities in the context of the scenario.	Selection of appropriate legal principles. Thorough understanding relevant to the context, showing a detailed knowledge and understanding of the relevant law. Uses a wide variety of appropriate authorities in the context of the scenario.

To be used twice, once for each activity in unit 3 – marks 36 (x2)

Total Marks for external Task is 72

Application of legal principles and research to information provided	**0**	**1–2**	**3–4**	**5–6**	**7–8**
	No rewardable material.	Demonstrates limited application of the relevant law to the scenario. Limited use of precedents/ authorities in the context, drawing on research.	Demonstrates some application of the relevant law to the scenario. Selects and applies some relevant precedents/ authorities in context, drawing on research.	Demonstrates competent application of the relevant law to the scenario. Selects and applies relevant precedents/authorities in context, drawing on research.	Demonstrates detailed and thorough application of the relevant law to the scenario. Selects and applies relevant precedents/ authorities throughout in context, drawing on research.

To be used twice, once for each activity in Unit 3 – marks 36 (x2)

Total Marks for external Task is 72

Assessment focus	Band 0	Band 1	Band 2	Band 3	Band 4
Analysis of legal authorities, principles and concepts	0	1–2	3–4	5–6	7–8
	No rewardable material.	Analysis is limited. Analysis lacks a grasp of the concepts in the context of the scenario. Alternatives are stated but with no supporting evidence.	Some analysis. Analysis demonstrates a basic grasp of the concepts and their relevance in this scenario. Alternatives are stated with some supporting evidence.	Linked statements provide a logical analysis of the evidence in the scenario. Analysis demonstrates a good grasp of the concepts and their relevance in this context. Alternatives are detailed, making use of supporting evidence.	Detailed and coherent statements provide a clear and logical analysis of a wide range of relevant evidence in the scenario. Analysis demonstrates a thorough grasp of the concepts and their relevance in this context. Alternatives are considered in depth, using appropriate supporting evidence.

To be used twice, once for each activity in Unit 3 – marks 36 (x2)

Total Marks for external Task is 72

Assessment focus	Band 0	Band 1	Band 2	Band 3	Band 4
Evaluation and justification of decisions	0	1–2	3–4	5–6	7–8
	No rewardable material.	Interpretation of some legal principles/authorities but is generic, lacking detail and relevance to the context. Limited evaluation of the outcome of the case using legal principles, coming to a basic conclusion.	Interpretation of some principles/authorities relevant to the context. Some evaluation of the outcomes of the case using legal principles/authorities, coming to a conclusion that is justified in part.	Interpretation of main principles/authorities relevant to the context. Evaluation of the outcomes of the case using principles/authorities, coming to a conclusion that is mostly but not wholly justified.	Detailed interpretation of the main principles/ authorities relevant to the context. Detailed evaluation of the outcomes of the case using principles/ authorities and coming to a fully justified conclusion.

Assessment focus	**Band 0**	**Band 1**	**Band 2**	**Band 3**	**Band 4**
Presentation and structure	0	1	2	3	4
	No rewardable material.	Lacks professional format and structure, leading to lack of clarity. Language is inappropriate for audience.	Has a basic professional format and structure. Language is sometimes appropriate for audience.	Has a logical structure and format that is generally clear and professional. Language is appropriate for audience.	Is well written, uses clear language, has a logical and professional format and structure. Language is appropriate for audience throughout.

Activity 1: Homicide

Identify the relevant homicide offence (murder/voluntary manslaughter) and demonstrate an understanding of the legal principles relating to murder and voluntary manslaughter. Recognise the relevant authorities.

Murder

Actus reus

- Unlawful killing – positive voluntary act or an omission.

Causation – causing death – ordinary rules of causation used here

- Factual causation – '*but for*' test from *R v White*
- Legal causation – D must be a more than minimal cause (*R v Kimsey*) – **reference to intervening acts not required as not relevant to the question.**

Mens rea
Express malice aforethought:

- Death was D's aim, objective and purpose – (*R v Mohan*).

Implied malice aforethought:

- intention to cause GBH – (*R v Vickers).*

Apply the law to Kevin

- Kevin has committed an unlawful killing through repeatedly hitting Daniel with a hammer – this was a positive voluntary act
- Kevin's acts were the cause of death. There are no issues relating to causation as he is both the factual and legal cause of death. If Kevin hadn't hit Daniel repeatedly with the hammer, he would not have died and there were no intervening acts to break the chain of causation
- It would appear that Kevin had a direct intent to kill Daniel as he was angry about the comments that Daniel had made about his sister, Renee. The fact that he repeatedly hit Daniel on the head with the hammer, shouting "die" suggests that death was Kevin's aim, objective and purpose.

Identify the relevant partial defence to murder (loss of control) and demonstrate an understanding of the legal principles relating to loss of control

Loss of control comes from s54 Coroners and Justice Act 2009

- Loss of self-control – there must be a total loss of self-control. This does not have to be sudden as a reaction to extreme gravity may be delayed (*R v Dawes*). There must be sufficient evidence that D lost control (*R v Jewell*). D cannot have acted in a considered desire for revenge
- Qualifying trigger – triggers are contained in s55. These are: a) fear of serious violence against D (*R v Lodge*) or another identified person (*R v Ward*) – this

is judged subjectively; or b) things said or done that are of an extremely grave character that gives D a justifiable sense of being seriously wronged – this is judged objectively. There can be a combination of both triggers
- A person of D's age and sex with a normal degree of tolerance and self-restraint and in the circumstances of D might have reacted in same or similar way as D – if the reasonable man would not have acted in the same way then there is no defence (*R v Van Dongen*).

Apply the law to Kevin

- Kevin has clearly lost self-control when he rushed over to Daniel and hit him repeatedly with a hammer after Daniel made the comments about Kevin's sister
- It could be argued that Kevin feared serious violence against his sister as he knew that Daniel had broken her arm in the past and had said she would get another beating if she didn't clean up the spillage
- Alternatively, it could be argued that it was things said or done which triggered Kevin into acting. The fact that Daniel had laughed about what he had previously done to Renee and made several comments about her, could convince a jury to see these as being of an extremely grave character that would give Kevin a justifiable sense of being wronged
- A 33-year-old male with a normal degree of tolerance and self-restraint would have reacted similarly to the comments and threats of violence made by Daniel. The relevant circumstances are that his sister has been attacked in the past and had her arm broken. The jury would be likely to determine that someone of D's age and sex and in his circumstances would have acted in the same way.

Analyse the likely outcomes of the case

- Given the considerations above, the most likely outcome is that Kevin will be guilty of murder as all elements of the offence are established. However, it is likely that he will be able to successfully plead the partial defence of loss of control. The effect of this would be to reduce his conviction from murder to voluntary manslaughter which allows the judge discretion in his/her sentencing rather than having to impose a mandatory life sentence.

Credit any evaluative points.

Credit alternative lines of reasoning where properly supported.

Identify the relevant police power that is being exercised (stop and search) and demonstrate an understanding of the legal principles relevant to detention.

- Under s1 Police and Criminal Evidence Act 1984 (PACE), the police can stop and search a person or his/her vehicle in a public place where they have reasonable grounds to suspect that he/she has stolen or prohibited articles
- S2 of PACE and Code A require the police to tell the suspect the reason for the search, their name and the station they are attached to.

Apply the law to Kevin

- The fact that the police stopped Kevin in his garden is potentially unlawful as this would not be classed as a public place for the purposes of s1 PACE
- The police have acted lawfully when they told Kevin why they were searching him as he was a suspect in a murder case
- The fact that the police have not provided Kevin with their names and the station they are attached to is potentially unlawful as this is a key requirement under s2 PACE and Code A.

Analyse the likely outcomes

- It is likely that the police will have behaved unlawfully when they searched Kevin in his garden and failed to provide him with the details of their names or the stations they were attached to.

Activity 2: Offences against Property

Identify the relevant property offences for the scenario (basic criminal damage and criminal damage by arson) and demonstrate an understanding of the law relating to basic criminal damage and arson. Recognise any relevant authorities.

Basic criminal damage

Section 1(1) Criminal Damage Act 1971: '*a person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage such property or being reckless as to whether any such property would be destroyed or damaged, shall be guilty of an offence.'*

Actus reus

- Destroys or damages – property will be damaged if it takes time, money and effort to rectify it (*Roe v Kingerlee*)
- Property – s10(1) Criminal Damage Act 1971 defines property as property of a tangible nature, including real or personal property, money or tamed wild animals
- Belonging to another – under s10(2) Criminal Damage Act 1971 property will belong to another where someone has custody or control of the property or has a proprietary right, interest or charge on it.

Mens rea

- Intention to destroy or damage property belonging to another, or
- Subjective recklessness as to whether property belonging to another is destroyed or damaged. (*R v G and R*).

Arson

Arson is defined in s1(3) Criminal Damage Act 1971, which states that any offence under s1 committed by destroying or damaging property by fire shall be charged as arson.

Apply the law to Mariam

Criminal damage/arson

- Mariam has damaged property in the form of the camera/gym.
- This will count as property belonging to another since the camera/gym belongs to the neighbour/boyfriend.
- The damage was done intentionally as we are told she planned both offences.
  .

Analyse the likely outcome of the case

- Mariam is likely to be found guilty of criminal damage/arson.
- It is clear that she damaged property belonging to another and had done so intentionally due to the evidence of pre-planning following the threat of the severe beating.

Credit any evaluative commentary.

- The definition of damage can include even temporary damage where the victim will incur any cost, which does not seem fair

Credit any alternative lines of reasoning where properly supported.

Identify the relevant defence for the scenario (duress by threats) and demonstrate an understanding of the law relating to duress by threats. Recognise any relevant authorities.

The defence of duress by threats is a full defence and the test comes from the case of *R v Graham.* It is a two-stage test.

1) Was D compelled to act as she did because of threats of death or serious injury?
    - The threat must be of death or serious injury
    - It must be towards D or someone she has responsibility for
    - It must be a threat to commit a specific offence (*R v Cole)*
    - The threat must be effective at the moment the crime is committed (*R v Hudson and Taylor*)

2) Would the reasonable man sharing D's characteristics have responded in the same way?
    - The jury can only take into consideration age, sex, pregnancy, serious physical disability, recognised mental illness or psychiatric disorder (*R v Bowen*).

Application of the law to Mariam

- Duress by threats applies here as there is a threat to commit a specific offence as Gabriel told Mariam to set fire to the gym equipment as a way of scaring Jack into repaying him or he would give her a severe beating.
- There was clearly a threat of serious injury directed at Mariam as we are told Gabriel will give her a severe beating
- The threat was effective at the time the crime was committed as Mariam committed the offence early on Saturday morning following the threat sent to her by text on Friday evening.
- It is likely that a female of Mariam's age would have acted as she did.

Analyse the likely outcomes

It is likely that Mariam will be able to claim the defence of duress by threats due to the fact that Gabriel has threatened to give her a severe beating if she did not set fire to the gym equipment to scare Jack into repaying him. It is therefore likely that she was compelled to act as she did due to the fact that the threats of serious injury were directed at her. It seems likely that a woman of her age would have acted as she did.